CHARLES ELMORE CROPLEY

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1945

No. 366

HAROLD H. EMMONS,
Petitioner (Appellant Below)

vs.

MAX SMITT, JOHN C. SPAULDING, EDWARD H. YOST, EMIL W. COLOMBO, ARTHUR A. KOCINSKI, THEODORE LEVIN, and STATE BAR OF MICHIGAN
Respondents (Appellees Below)

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondents' Brief Does Not Answer Petitioner's Claims

Respondents' brief filed herein does not answer nor challenge the substance or correctness of any of the questions presented in the petition for certiorari and the brief in support thereof, viz.:

1. That the legal scope and effect of the final orders and decrees upon which declaratory judgment is sought in the lower court were not and could not have been heard or determined in the State prohibition proceedings.

2. That the respondents are without jurisdiction to dispute or determine the legal scope and effect of the State orders and decrees.

3. That the complaint alleges that a dispute exists between petitioner and respondent as to the interpretation to be given to certain courts' final orders and decrees and this dispute has been substantiated in the arguments in the lower court in the briefs filed by respondents.

4. The erroneous conclusions of fact of the lower court designated in our brief stand unchallenged.

5. The erroneous conclusions of law of the lower court designated in our brief stand unchallenged.

6. The questions presented and the reasons relied upon for the allowance of the writ as stated in the petition (pages 6 and 7), stand unchallenged.

Respondents' Brief Is Based Almost Wholly on Certain of the Contents of the Unprinted Portions of the Record, Which are Spurious, Untrue and Inadmissible at the Present State of the Case

Respondents' brief is comprised almost entirely of comments and arguments upon the so-called grievance proceedings brought by the State Bar of Michigan before one of its Grievance Committees, membership of which comprises the other six defendants herein, and to a statement of charges pending before the Grievance Committee of the State Bar of Michigan which directly and by innuendo

charge petitioner with unethical conduct as an attorney. Such statements completely ignore the pertinent facts and refutation which petitioner at the present stage of the proceedings has no opportunity to present, but which will be fully answered at the hearing on the merits. None of these matters are properly before the court at the present stage of the case, but are thrust in by respondents' counsel for the obvious purpose of prejudicing the court with this extraneous, indirect and spurious material. This method does not accord with ethical standards applicable to any client or attorney, and particularly so when the client is a State Bar Association attacking one of its own members.

Respondents' Brief Chiefly Argues Questions Which are Not Involved In This Case

Respondents answer our petition and brief by stating points which are not questions in the case and then citing authorities in support thereof. *Bradwell v. Illinois,* and other cases on page 8 of respondents' brief are in accordance with our position as stated on pages 26 and 27 of our original brief herein. We have no quarrel with the legal effect of *Erie Railroad Company v. Tompkins* and other cases cited by respondent on page 9 which require the Federal courts to follow the decisions of the State court except in certain instances. It is to be noted that the *Erie Railroad Company* case held that one of the excepted instances is in matters governed by the Federal Constitution as in the case at bar. Not a single case cited by respondent refutes the authorities cited in our brief pertaining to the questions presented in the petition and the reasons relied on for the granting of the writ.

Petitioner's Case Is Based Entirely on the Bill of Complaint, and the Material Contained in the Unprinted Portion of the Record Is Inadmissible under the Authorities

The case before this court is based entirely on petitioner's bill of complaint found in the printed record (pp. 1-27). This bill of complaint does not maintain nor contend, nor purport to be, an appeal from the decision of the Michigan Supreme Court prohibiting the Michigan Circuit Court from hearing petitioner's bill for declaratory judgment filed therein, nor does it attempt to prohibit future activities of the defendant State Bar or its committee in the grievance proceedings, nor does it assert that petitioner's right to practice law is a property right, that being unnecessary to the present case.

The lower court properly held "it must be kept in mind that the motion to dismiss must be determined by the facts set out in the complaint" (R. 89). In order for the lower court to arrive at this conclusion, it avoided reference to matters not contained in the complaint and now relied upon by respondent, for the reason that all such material was introduced by respondents over the objection of counsel for petitioner (R. 31, 72). In the lower court petitioner argued that upon a motion to dismiss under Rule 12 (b), (6), i. e., for failure to state a cause of action, the allegation of the complaint must be taken as true, and further, that such motion will not be granted unless it clearly appears from the complaint itself that no cause of action can be proved or established on hearing. Citing:

Cool v. International Shoe Co., 142 Fed. (2) 318, 320 (8th Circuit, May 3, 1944);

Cohen v. United States, 129 Fed. (2) 733, 736 (8th Circuit, August 3, 1942);

Douglass v. Jeannette (1943), 319 U. S. 157, 87 L. Ed. 1324, 130 Fed. (2) 652;

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Tahir Erk v. Glenn L. Martin Co., 116 Fed. (2) 865 (4th Circuit, Jan. 6, 1941).

The lower court after considering the foregoing authorities made no reference to the spurious matter referred to on pages 4 and 5 of respondents' brief as representing the contents of the complaint filed with the respondent State Bar Grievance Committee. The obvious purpose of attempting to inject this material into the record is to contradict the allegations of the complaint, to establish the claims which appellee would urge in a hearing on the merits, and to divert the court's attention from the questions presented in the petition for certiorari.

The Decision of the Michigan Supreme Court Prohibiting the State Courts from Hearing Petitioner's Bill for Declaratory Decree, Opens the Door of the Federal Court for a Declaratory Proceeding Therein

The decision of the Michigan Supreme Court prohibiting the Circuit Judge from hearing the case is accepted as final in Michigan, but petitioner does assert in his bill and before this court that such action of the Michigan Supreme Court, denying him as a citizen the right to a hearing on his declaratory bill, opens the door to his present bill filed in the Federal Court asking a declaratory decree. This eliminates the question whether such denial by the Michigan Supreme Court was based upon a Federal or a non-Federal question. The provisions of the Constitution and of the Federal Statutes and the cases interpreting the same are cited in petitioner's brief herein as establishing the Federal jurisdiction under the circumstances set up in petitioner's bill of complaint.

These contentions have not been answered by respondents' brief.

Respondents In the Grievance Proceedings Now Attempt to Repudiate Court Orders and Decrees Entered Twenty Years Ago by the Wayne County Probate Court and the Oakland County Circuit Court

Referring to the statement of the grievance proceedings in respondents' brief (pp. 4 and 5), an examination of the bill of complaint herein discloses that the grievance proceedings are based upon the assertion that the proceeds received by petitioner in his individual operation of subdividing and marketing certain real estate, at his own risk and expense, belonged to the estate from which he had purchased the property and for which he had paid the estate in full. The orders of the Wayne Probate Court and the decrees of the Oakland County Circuit Court, passed upon and, as the plaintiff asserts, finally determined this question some twenty years before the defendants now raise it in these proceedings, and such determination was adverse to the present claim of the defendants. They now assert that these orders and decrees are not binding upon them, and therefore upon anyone else, because they were, as the defendants say, "wash" sales or "conduit" sales. This contention is directly contrary to the scope, purpose and language of these orders and decrees.

This, however, is not the question presented by the petition for certiorari. It only goes to prove that a decree in a declaratory judgment proceedings may be beneficial to the respondents as well as petitioner and purchasers of lots, and that a dispute does exist as to the interpretation of these orders and decrees.

The Petition for Certiorari Is Presented to Protect and Secure the Civil Rights Guaranteed to Petitioner By the Fifth and Fourteenth Amendments to the Constitution and by the Civil Rights Act

Petitioner's purpose in presenting the petition for certiorari is to protect his civil rights and to obtain that due process and equal protection of the laws guaranteed to all citizens by the Federal Constitution.

Petitioner, as a citizen, who has incurred in his personal capacity large obligations under warranty deeds and agreements to improve the property, is asking the court to construe and determine finally the scope and effect of these orders and decrees, and has asked in Subdivision 2 of his prayer (R. 25), that the defendants be restrained *pendente lite* pending the determination of the instant cause. If, after this cause shall be determined, and decree entered, the defendants desire to proceed further with their grievance proceedings, it will be possible for them to do so. However, if the orders and decrees are by decree herein construed to mean exactly what they say, then defendant's grievance proceedings will vanish and the present attempt of the defendants to ignore such orders and decrees will be properly defeated. In sum, such a decree will furnish the absolute guidance not only for petitioner and the persons to whom he executed deeds of the property, but also to the defendants-respondents herein. This is the purpose of a declaratory proceeding.

There is no claim that the Federal court has jurisdiction over State disciplinary proceedings of attorneys. The granting of the injunction as prayed for is only incidental to the relief sought in the declaratory judgment proceedings.

CONCLUSION

Petitioner therefore submits that his petition for certiorari should be granted and he be allowed the hearing in his declaratory proceeding which is guaranteed to every "person" including every citizen of the United States and of Michigan by the Fifth and Fourteenth Amendments of the Constitution and by the Civil Rights Statute, all of which are set forth verbatim in the petition and brief heretofore filed by petitioner herein.

Respectfully submitted,

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